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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,399

03/26/2004

Jerry Dale St. Clair

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EXAMINER

MCDONOUGH, JAMES E

ART UNIT

PAPER NUMBER

1755

MAIL DATE

DELIVERY MODE

05/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,399

Applicant(s)

CLAIR ET AL.

Examiner

James E. McDonough

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

(1) Applicant's arguments, see page 9, paragraphs 2-6, and page 10, paragraphs 1-4, filed 4/13/2007, with respect to the abstract, and claims 1-24 have been fully considered and are persuasive. The rejections have been withdrawn.

Original Rejection

(2) Claims 6 and 19 are objected to because of the following informalities: In claim 6 insert the indefinite article --a-- before "tris-" and "diphosphonite ester"; likewise in claim 19. Appropriate correction is required.

(3) Claims 1-4, 9-12, 15-17, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Putzig, USP 6,166,170 (hereafter referred to as Putzig I). Putzig I discloses the invention as claimed (abstract; col. 2, 1. 44-64; col. 3, 1. 9-19, 1. 38-56; example 10 inter alia).

(4) Claims 1-4, 9-12, 15-17, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Duan et al., USP 6,489,433 (hereafter referred to as Duan). Duan discloses the invention as claimed (abstract; col. 2, 1. 42-62; col. 3, 1. 5-38; col. 5, 1. 28-52).

(5) Claims 1, 2, 5 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Putzig et al., USP 6,066,714 (hereafter referred to as Putzig II). Putzig II discloses the invention as claimed (abstract; col. 2, 1. 22-48; col. 3, 1. 37-63; examples 1-3, 5; control B).

Response to Arguments

(6) Applicants argue that Putzig I fails to disclose any combination of the stabilizer components in the abstract. This is found not persuasive because the Putzig reference is not limited to its abstract.

(7) Applicants argue that Putzig I does not disclose a zirconium chelate. This is not persuasive because Putzig I teaches using a titanium chelate by reacting a titanium ortho ester with a complexing agent, Putzig also teaches that the titanium compound can be combined with a zirconium compound, and teaches that the zirconium compound can be a zirconium ortho ester. The skilled artisan would appreciate that adding a complexing agent to a mixture of titanium and zirconium ortho esters would result in a mixture of titanium and zirconium chelates.

(8) Applicants argue that Putzig I does not disclose the use of phosphorous ester that contain no free -OH groups. This is found not persuasive because in example 1 Putzig I teaches the use of sodium benzene phosphonate, which, has no free -OH groups and is an ester of phosphorus.

(9) Applicants argue that Duan fails to disclose the aspects of the invention in the abstract. This is not persuasive because the reference is not limited to the abstract.

(10) Applicants argue that Duan fails to disclose the use of chelated zirconium. This is not persuasive because as stated above the combination of a zirconium ortho ester (zirconium tetrahydrocarboxides) with a complexing agent will result in a zirconium chelate.

(11) Applicants argue the Putzig II fails to disclose aspects of the invention in the abstract. This is not persuasive because the reference is not limited to the abstract.

(12) Applicants argue that Putzig II does not disclose the use of esters of phosphorus that are free of -OH groups. This is found not persuasive because Putzig II teaches using dibutyl phosphate (column 3, lines 32-45) and preferably mixing the amine in a solvent then next adding the phosphate (column 5, lines 15-27), it is the offices position that first mixing dibutyl phosphate (acid) with an amine (base), will result in the formation of the salt of dibutyl phosphate, which, would be a phosphorus containing ester, having no free -OH groups.

(13) Applicants argue that Putzig II in example 2, 3 and 5 does not use a stabilizer so does not anticipate the claims. This is found not persuasive because the reference is not limited to the specific examples in the preferred embodiments,

Art Unit: 1755

furthermore, the mixture of amine with dibutyl phosphate will produce a phosphorus containing ester with no free –OH groups (Stabilizer).

(14) Applicants argue that the compounds are not phosphite esters. This is found not persuasive because the independent claims do not require a phosphite ester, only a phosphorus containing ester having no free –OH groups.

Conclusion

(15) THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

(16) Any inquiry concerning this communication or earlier communications from the examiner should be directed to James E. McDonough whose telephone number is (571)272-6398. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JEM 4/25/2007


AILEEN FELTON
PRIMARY EXAMINER